

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

HENRY WILLIAM DEMPSEY, JR.,

Petitioner,

v.

STATE OF NEVADA,

Respondent.

Case No. 3:21-cv-00302-RCJ-WGC

**ORDER**

Petitioner Henry Dempsey has filed an application to proceed in forma pauperis. ECF No. 1. Attached to the application is a motion for appointment of counsel. ECF No. 1-1. Based upon the statements in those documents, the court assumes that Dempsey seeks habeas corpus relief under 28 U.S.C. § 2254. However, he first must correct multiple defects.

First, Dempsey's application to proceed in forma pauperis is incomplete. He did not include a financial certificate signed by the appropriate officer and a statement of his inmate account, as required by 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2. In a letter attached to the application, Dempsey states that the court can obtain that information itself from the Nevada Department of Corrections. He is incorrect. The Nevada Department of Corrections will not provide that information directly to the court; Dempsey must request that information himself. The court notes that Dempsey has not used this court's application form. The court will send him

1 a new form. Dempsey will need to complete a new application to proceed in forma pauperis and  
2 submit his request for financial information to the appropriate officials.

3 Second, Dempsey has not submitted a petition for a writ of habeas corpus. The court will  
4 send him this court's petition form and instructions. He will file a petition if he wants this action  
5 to proceed. Additionally, Dempsey will need to name the correct respondent, who is the warden  
6 of the prison where he is held. Rule 2(a), Rules Governing Section 2254 Cases in the United  
7 States District Courts.

8 Third, the court cannot grant Dempsey's motion for appointment of counsel. In  
9 considering a motion for appointment of counsel, "the district court must evaluate the likelihood  
10 of success on the merits as well as the ability of the petitioner to articulate his claims pro se in  
11 light of the complexity of the legal issues involved." Weygandt v. Look, 718 F.2d 952, 954 (9th  
12 Cir. 1983). By not yet having filed a petition, Dempsey has no likelihood of success on the  
13 merits. The court thus denies the motion for appointment of counsel.

14 IT THEREFORE IS ORDERED that the application to proceed in forma pauperis (ECF  
15 No. 1) is **DENIED** without prejudice.

16 IT FURTHER IS ORDERED that petitioner must file another application for leave to  
17 proceed in forma pauperis, accompanied by a signed financial certificate and a statement of his  
18 inmate account. The clerk of the court shall send petitioner a blank application form for  
19 incarcerated litigants. In the alternative, petitioner must make the necessary arrangements to pay  
20 the filing fee of five dollars (\$5.00), accompanied by a copy of this order. Petitioner will have 45  
21 days from the date that this order is entered to comply. Failure to comply will result in the  
22 dismissal of this action.

23 IT FURTHER IS ORDERED that the clerk of the court file the motion for appointment of  
24 counsel.

25 IT FURTHER IS ORDERED that the motion for appointment of counsel is **DENIED**.

26 IT FURTHER IS ORDERED that the clerk of the court send petitioner a petition for a  
27 writ of habeas corpus pursuant to 28 U.S.C. § 2254 form with instructions. Petitioner will have  
28 45 days from the date that this order is entered to file petition for a writ of habeas corpus. Neither

1 the foregoing deadline nor any extension thereof signifies or will signify any implied finding of a  
2 basis for tolling during the time period established. Petitioner at all times remains responsible for  
3 calculating the running of the federal limitation period under 28 U.S.C. § 2244(d)(1) and timely  
4 asserting claims. Failure to comply with this order will result in the dismissal of this action.

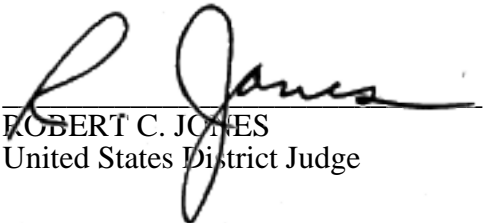
5 IT FURTHER IS ORDERED that petitioner must place the case number, 3:21-cv-00302-  
6 RCJ-WGC, in the space provided on the form, regardless of any statement that the clerk of the  
7 court will supply the case number.

8 IT FURTHER IS ORDERED that the clerk add Aaron Ford, Attorney General for the  
9 State of Nevada, as counsel for respondents.

10 IT FURTHER IS ORDERED that respondents' counsel must enter a notice of appearance  
11 within 21 days of entry of this order, but no further response will be required from respondents  
12 until further order of the court.

13 IT FURTHER IS ORDERED that the clerk provide copies of this order and all prior  
14 filings to the Attorney General in a manner consistent with the clerk's current practice, such as  
15 regeneration of notices of electronic filing.

16 DATED: August 9, 2021.

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18 ROBERT C. JONES  
19 United States District Judge  
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